

To: President and Trustees of Green College  
From: Hilary Chubb, Legal Counsel  
Date: February 20, 2014  
Re: Pending Legal Action

In the case involving Ropes and the injured student, I must advise you that often the court ruling turns on whether they believe that the injury was foreseeable. That is one consideration for us to make in this case as are two other points; if we, as an institution had a 'special duty' in this case or 'special relationship' with Ropes, and past legal precedent.

In this case, the altercation and following injury may be considered unforeseeable because Ropes had not had any disciplinary problems at our college during his first or second year up to this point. However since Ropes had previously been imprisoned for assault the plaintiffs may argue that the altercation was in fact foreseeable. The opinion of the court as to whether this event could have been foreseen will likely be the hinge in any legal proceedings.

A more definitive piece is that there was no 'special duty' or 'special relationship' in this case. Simply living in a residence hall creates no extra responsibility on the institutions' part beyond what you already prepare for by providing rules, RA's, and other supervision. Additionally, Ropes never received counseling or consideration based on his past record and therefore there was no 'special relationship' established between him and our institution.

Two past court cases are notable. In *Furek v. University of Delaware*, the university was held liable because they had a policy against hazing and repeatedly warned students of those dangers. In our case, alcohol was involved and we have a policy against underage drinking. However, since this policy is simply a reflection of federal law we have no assumed duty to further prevent it. The second notable case is *Freeman v. Busch*. In this case the court found that the college did not have a custodial duty to protect a student, who was adult and intoxicated, from a sexual assault. The parallels from that case to ours are that the injured student had been drinking, he is an adult, and the incident occurred in the residence hall.

It is based on the facts that there was no 'special duty' or 'special relationship' in this case, the past precedents, and the strong likelihood that the court would find that the risk of harm in this case was not foreseeable, that I advise that it is unlikely that the parents will prevail in court.

The following are recommendations for revisions to policies on residence halls and student conduct. Provide separate housing options for nontraditionally aged students. Enforce the policy against underage drinking not only outside the residence halls but also within them. Two other possible suggestions are to allow no drinking or signs of being under the influence of alcohol within the residence halls regardless of age, or to create a 'dry campus' and make a policy against any type of drinking on campus or in residence halls.